

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) S63.2-11293-US01									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/728516		Filed December 5, 2003								
	First Named Inventor Tracee Eidenschink										
	Art Unit 3773	Examiner Melanie Ruano Tyson									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding: 5px; text-align: right;">/Jeremy G Laabs/ _____ Signature</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding: 5px; text-align: right;">Jeremy G. Laabs _____ Typed or printed name</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number 53170 _____</td><td style="vertical-align: top; padding: 5px; text-align: right;">952-563-3000 _____ Telephone number</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding: 5px; text-align: right;">August 7, 2009 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Jeremy G Laabs/ _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Jeremy G. Laabs _____ Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 53170 _____	952-563-3000 _____ Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	August 7, 2009 _____ Date
<input type="checkbox"/> applicant/inventor.	/Jeremy G Laabs/ _____ Signature										
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<input type="checkbox"/> *Total of _____ forms are submitted.											

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Tracee Eidenschink, John Peckham
Application No.:	10/728516
Filed:	December 5, 2003
For:	Detachable Segment Stent
Examiner:	Melanie Ruano Tyson
Group Art Unit:	3773

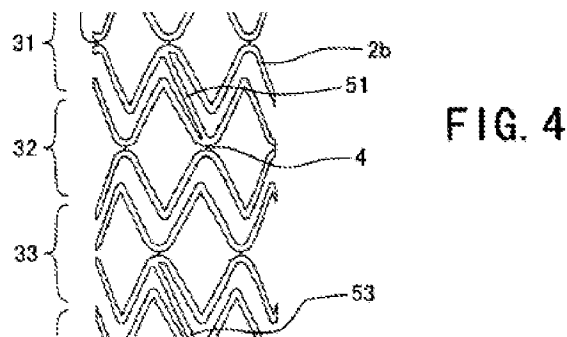
Docket No.: S63.2B-11293-US01

PRE-APPEAL BRIEF REQUEST FOR REVIEW

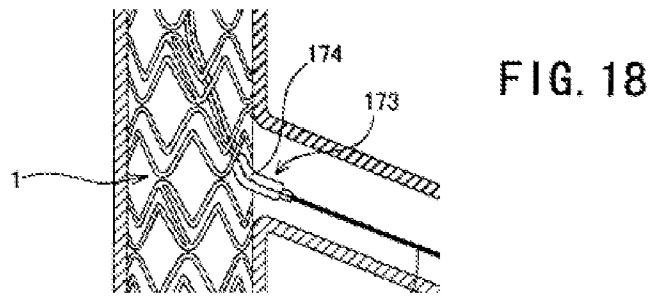
This is in response to the Final Office Action dated **April 8, 2009**, which rejected claims 1, 2, 4-14, 35-38 and 55-57 under 35 USC § 103 over Mitsudou (US 7029492) in view of Frantzen (US 5873907). The rejections are traversed because the applied references do not disclose each limitation of any of the rejected claims, and because the rejection has not articulated a reason that would have actually prompted a person of ordinary skill in the art to modify the applied references as proposed in the rejections.

The Office Action proposes to modify the Mitsudou stent by adding an electrical lead as disclosed by Frantzen. See Office Action at page 3.

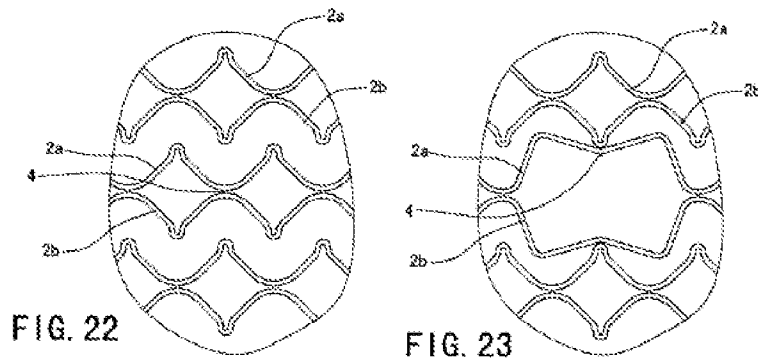
Mitsudou teaches a stent formed from a plurality of wavy annular members (e.g. 2b), which are connected by connection portions 4. See column 3, lines 48-53 and Figure 4 provided below.



Mitsudou teaches that some of the connection portions 4 located in the vicinity of the axial center of the stent are weakened, and can be broken by inserting an inflation balloon through the stent sidewall and inflating the balloon. See e.g. column 3, lines 53-61 and Figure 18, provided below.

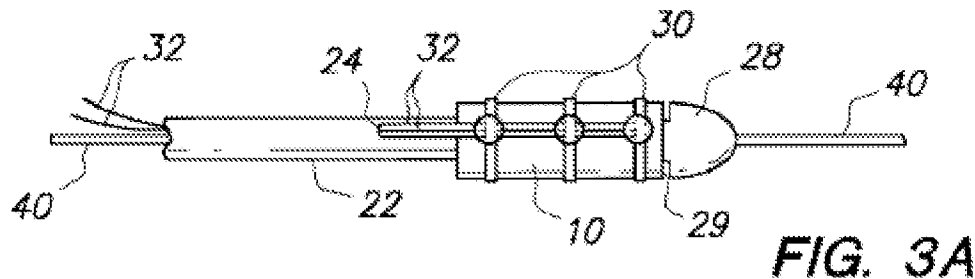


As the balloon 174 is inflated, portions of the annular elements 2a, 2b in contact with the balloon 174 are dilated and the weak connector 4 oriented over the branch vessel is broken. This creates an enlarged side branch opening, which allows flow into the branch vessel. See column 26, lines 26-51 and Figures 22 and 23, provided below.



Thus, Mitsudou teaches a balloon expandable stent having weakened connectors, wherein a balloon can be positioned through the stent sidewall and used to dilate a side branch opening by breaking a weakened connector and forcing annular elements 2a and 2b apart.

Frantzen teaches a stent delivery system wherein electrical leads 32 are connected to binding straps 30 that constrain a stent 10 to a contracted delivery diameter. See Fig 3A, provided below, and column 3, lines 31-36 and 46-60. When current is supplied to the leads 32, the binding straps 30 rupture and the stent expands. See column 4, lines 45-60.



Claim Limitations – Claim 1

Independent claim 1 recites, “adjacent serpentine bands connected by connector struts... the connector struts including permanent connector struts and disengageable connector struts,” and an “electrical lead...electrically coupled to the disengageable connector struts.”

The applied references do not disclose or suggest an electrical lead that is electrically coupled to the connector struts of a stent. Mitsudou does not disclose or suggest an electrical lead. In Frantzen, the electrical leads are electrically coupled to the binding straps 30, which are wrapped around the stent. The electrical leads are not electrically coupled to the stent, or to connector struts of the stent.

Therefore, the applied references do not disclose or suggest each limitation of claim 1, or of any claim dependent therefrom.

Claim Limitations – Claim 2

Independent claim 2 recites, “wherein at least a portion of said at least one disengageable connector strut is made from a material having a higher corrosion potential than a material used to form said serpentine bands.”

Both Mitsudou and Frantzen teach stents; however, neither reference discloses or suggests a stent comprising a disengageable connector strut having a higher corrosion potential than that of a serpentine band. For example, Mitsudou teaches examples wherein the stent is formed from a tube of metal. See e.g. Examples 1-4 (column 26, line 55-column 29, line 14). All portions of the Mitsudou stent have the same corrosion properties.

Therefore, the applied references do not disclose or suggest each limitation of claim 2.

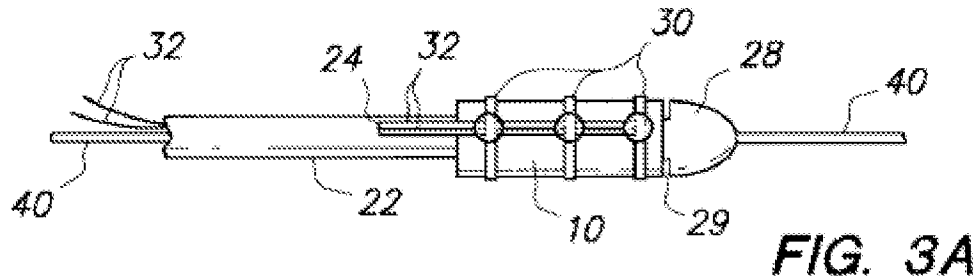
Claim Limitations – Claim 35

Independent claim 35 recites a stent comprising “a cylindrical metal framework having a plurality of cells... wherein the mass of the metal in the metal framework decreases upon disengagement of said disengageable connector strut.”

The applied references do not disclose or suggest the mass of a stent framework decreasing upon disengagement of a disengageable connector strut.

Mitsudou does not disclose or suggest that the mass of the stent metal framework changes upon breakage of the weak connector 4.

Frantzen does not disclose or suggest that the mass of the stent metal framework changes upon detachment of the binding straps 30.



Although the mass of the binding straps 30 may change upon detachment, the binding straps 30 are separate from the stent 10, and the mass of the stent is not changed.

Therefore, the applied references do not disclose or suggest each limitation of claim 35, or of any claim dependent therefrom.

Motivation for Modification

The Office Action proposes to modify the Mitsudou stent using the Frantzen electrical lead to create “a system that would enable disengagement of the disengagable connectors at desired locations directly with electrical leads, thus eliminating the step of having to introduce a balloon into desired portions of the stent after the stent has been deployed” (emphasis added). See Office Action at page 3.

Contrary to the statement in the Office Action, the proposed modification would not eliminate the step of using a balloon to dilate a side branch opening. Even if the Frantzen electrical lead system were somehow used to break a particular weak connector 4 of Figure 22, the disengagement of the weak connector 4 alone would not enlarge the side branch opening. After detachment, the stent would retain the same annular band 2a, 2b pattern as before detachment. In order to dilate the side branch opening to the configuration illustrated in Figure 23, a balloon must still be used to dilate the annular bands 2a, 2b, even if the weak connector 4 was previously broken by a mechanism other than a balloon.

Thus, the reason asserted in the rejection for modifying the applied references

would not have actually motivated a person of ordinary skill in the art to perform the modification. The proposed modification would add cost and complexity to both the stent itself and the stenting procedure; however, the modification would have no benefit. Therefore, the rejection has not identified a reason that would have prompted a person of ordinary skill in the art to modify Mitsudou in a way that would read on any of the pending claims, and the Office Action has not presented a *prima facie* case of obviousness.

Impermissible Hindsight

Frantzen teaches a stent retaining system comprising electrolytically disengagable retaining bands. The rejection proposes to use Frantzen's electrical leads to detach structural connectors of the Mitsudou stent. Thus, the rejection dissects the Frantzen stent retaining system into component parts, removes the electrical lead and proposes to attach the lead directly to the Mitsudou stent with no guidance from the prior art. Neither applied reference discloses or suggests an electrical lead that is electrically coupled to the stent. The only teaching of the claimed configuration appears in Applicant's disclosure, and the modification proposed in the rejection stems from an impermissible hindsight use of Applicant's teachings.

Conclusion

Based on at least the foregoing remarks, Applicants assert that all of the pending claims are patentable over the applied references under 35 USC § 103, and request withdrawal of the rejections.

Respectfully submitted,
VIDAS, ARRETT & STEINKRAUS

Date: August 7, 2009

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